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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 963

HELEN MAXINE LEVI TRAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After waiving a trial by jury petitioner was convicted in the United States District Court for the Southern District of California, on stipulated facts (Appendix, pp. 7–11, *infra*), of having twice wilfully departed from the United States in 1962, destined for Cuba via Mexico, without bearing a passport valid for travel to Cuba, in violation of Section 215(b) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1185(b). She was sentenced, on each of two counts, to suspended six-month terms of imprisonment and to pay a fine of $500 (R. 125). The court of appeals unanimously affirmed the conviction (Pet. App. B, pp. 1–4).

212-261—66

The principal issues in this case concern the construction and constitutionality of Section 215(b) of the Immigration and Nationality Act of 1952, which, as interpreted by the courts below, imposed criminal liability upon petitioner for her violation of the Secretary of State's restriction on travel to Cuba which was sustained by this Court in *Zemel* v. *Rusk*, 381 U.S. 1. Those issues were expressly reserved in the *Zemel* decision (381 U.S. at 18–20), and we agree that they present important questions of federal law. On the other hand, we are also of the view that the decision of the court of appeals was correct.

As was true of the governing statute in *Zemel*, neither the terms of Section 215(b) nor its legislative history "affirmatively indicate an intention" (381 U.S. at 8) to encompass violations of area restrictions, although "its language is surely broad enough" (*ibid.*) to bring such violations within its reach. The inclusion of Section 215(b) in the 1952 Act constituted a substantial reenactment of a provision which had become law in 1918 (40 Stat. 559). As this Court observed in *Zemel* (381 U.S. at 8–9), area restrictions were first imposed as early as 1915, so that the 1952 provision was passed with Congress' awareness of a more-than-35-year history of such restrictions. Regulations adopted in 1938 expressly authorized the Secretary of State to impose such restrictions (see 381 U.S. at 10), and a general order making passports invalid for designated countries was issued by the Secretary of State in May 1952—just one month

before the reenactment of the provision involved in this case. This history, we submit, provides more support for the inference that Congress contemplated area restrictions when it passed Section 215(b) in 1952 than was provided by the pre-1926 practice which this Court found to be sufficient in *Zemel* to warrant the conclusion that the 1926 Act conferred upon the Secretary of State the power to impose area restrictions. Since area restrictions were an immediate and contemporary problem in 1952, it is most unlikely that, as petitioner contends (Pet. 13–21), Congress was then concerned only with the problems of "border control."

Petitioner's constitutional arguments were, in our view, correctly rejected by the courts below. To the extent that petitioner's claims rest on the First and Fifth Amendments (Pet. 28–30) and on the assertion that the statute improperly delegated legislative functions (Pet. 27–28), they were rejected in *Zemel* v. *Rusk*, 381 U.S. 1. The contention that Section 215(b) fails to provide adequate warning for the imposition of criminal liability (Pet. 21–24) is also unsound. The statute makes it a crime to depart the United States without bearing "a valid passport," and petitioner clearly knew that she possessed no passport valid for travel to Cuba. Since she departed with the intention of traveling to Cuba, her departure was no different than if she had left with an expired or revoked passport.

Three subsidiary contentions made by petitioner do not, of themselves, warrant review by this Court; and they were correctly rejected by the courts below. The Secretary of State's failure to invoke Section 215(b) in issuing the particular regulation affecting travel to Cuba does not render that Section inapplicable (Pet. 25–27). The "excluding Cuba" regulation was an amendment to 22 C.F.R. 53.3(b) (Pet. App. D), which was originally promulgated with explicit reference to the predecessor of Section 215(b). It was not necessary that the later amendment expressly invoke the criminal sanctions underlying the entire regulation. Nor is there substance to the claim that the Presidential Proclamations of 1950 and 1953 were insufficient to sustain the imposition of area restrictions (Pet. 32–33). Presidential Proclamation No. 3004 (Pet. App. H) expressly incorporated the then-outstanding area restrictions in 22 C.F.R. 53.1–53.9 and recognized that a continuing national emergency existed which warranted such restrictions. The existence of a national emergency has since been reaffirmed by President Eisenhower in 1960 (Exec. Order No. 10896, 3 C.F.R. (1959–1963 Compilation) 425) and by President Kennedy in 1962 (Exec. Order No. 11037, 3 C.F.R. (1959–1963 Compilation) 621). Whether such an emergency exists because of an external threat is surely an executive decision based on political considerations. Petitioner's claim that the proclamations declaring an emergency should be disregarded by this Court is not merely contrary to

well-established principles regarding the separation of powers (see, *e.g.*, *Ludecke* v. *Watkins*, 335 U.S. 160, 170), but it is answered by common knowledge regarding the present state of international affairs.

Petitioner's claim that her conduct is not within the statute because she left the United States before receiving permission from Cuban authorities to travel to Cuba and did not go directly to that country (Pet. 31–32) is without merit. The stipulated facts show that she departed for the purpose of traveling to Cuba and that she accomplished this purpose (pp. 8, 9–10, *infra*). Hence her departure, insofar as it was accomplished without "a valid passport," was, for all practical purposes, no different than if she had traveled directly to Cuba. As the district court observed, the exception which petitioner would read into Section 215(b) would render the area restriction practically inoperative because anyone desiring to travel to a restricted area could then do so if he first went to any country for which no passport is required or to a country for which his passport is valid (Pet. App. A, pp. 7–8). If, as we submit, Section 215(b) imposes criminal liability on those who wilfully violate area restrictions, it could not have been the intent of Congress to permit such facile evasion.

For the foregoing reasons, we believe that the judgment of the court of appeals was correct. While we recognize that the principal questions presented in this case are important and merit resolution by this Court, we also note that there is no conflict of

decisions.[1] We believe it would be appropriate, therefore, for the petition for a writ of certiorari to be denied.

Respectfully submitted.

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MARCH 1966.

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[1] See *Worthy* v. *United States*, 328 F. 2d 386 (C.A. 5); cf. *United States* v. *Healy*, 376 U.S. 75, 83, n. 7. See also *Worthy* v. *Herter*, 270 F. 2d 905 (C.A.D.C), certiorari denied, 361 U.S. 918; *Frank* v. *Herter*, 269 F. 2d 245 (C.A.D.C.), certiorari denied, 361 U.S. 918; *Porter* v. *Herter*, 278 F. 2d 280 (C.A.D.C.), certiorari denied, 361 U.S. 918.

APPENDIX

United States District Court

Southern District of California, Central Division

No. 32380-CD

UNITED STATES OF AMERICA, PLAINTIFF

v.

HELEN MAXINE LEVI TRAVIS, DEFENDANT

STIPULATION OF FACTS

1. IT IS HEREBY STIPULATED by plaintiff, United States of America, by and through counsel, Francis C. Whelan, United States Attorney, and Thomas R. Sheridan, Assistant United States Attorney, for the Southern District of California, and Helen Maxine Levi Travis and her counsel, John T. McTernan and A. L. Wirin, that jury trial is waived (a written waiver of jury trial is also on file) and the Court may decide the case on the following stipulated facts and argument of counsel.

2. That at all times mentioned in both counts of the indictment No. 32380-CD the defendant, Helen Maxine Levi Travis, was and is a citizen of the United States of America, and her residence address was and is 6324 Primrose Avenue, Los Angeles, California.

3. That on January 21, 1962, defendant, Helen Maxine Levi Travis, at Los Angeles International Airport, Los Angeles, California, applied for and was

issued a United Mexican States tourist permit number 3677106 through Pan American Airways, allowing her to enter the Republic of Mexico within the next 45 days and remain therein 180 days from the date of entry as a "tourist."

4. That on January 22, 1962, defendant, Helen Maxine Levi Travis, intentionally left and departed from the United States of America by boarding flight number 901 of the Compania Mexicana De Aviacion at the Los Angeles Airport, Los Angeles, California, and was a tourist passenger on said flight to Mexico, D.F., and at the time of boarding said flight at Los Angeles, California, intended to seek permission from representatives of the Republic of Cuba in Mexico, D.F., to visit Cuba, and if such permission was granted, to travel from Mexico, D.F., to Cuba. At the time of departing from the United States as herein stated, defendant, Helen Maxine Levi Travis, did not have Cuba's permission to enter Cuba. On January 23, 1962, in Mexico, D.F., defendant, Helen Maxine Levi Travis, applied for permission to enter Cuba, and said permission was granted on January 26, 1962.

5. That on February 1, 1962, defendant, Helen Maxine Levi Travis, intentionally left and departed from the Central Airport, Mexico, D.F., by boarding flight number 311 of the Compania Mexicana De Aviacion, and was a tourist passenger on said flight to Havana, Cuba.

6. That prior to boarding said flight number 311 at Central Airport, Mexico, D.F., United Mexican States tourist permit number 3677106 was cancelled by an

official of the Department of Interior, United Mexican States, at Mexico, D.F.

7. That on August 18, 1962, defendant, Helen Maxine Levi Travis, intentionally left and departed from the United States of America, by automobile at San Ysidro, California, and entered the Republic of Mexico, at Tijuana, Baja California, and at the time she departed from the United States of America she intended to seek permission from representatives of the Republic of Cuba in Mexico, D.F., to visit Cuba, and if such permission was granted, to travel from Mexico, D.F., to Cuba. At the time of departing from the United States as herein stated, defendant, Helen Maxine Levi Travis, did not have Cuba's permission to enter Cuba. On August 23, 1962, in Mexico, D.F., defendant, Helen Maxine Levi Travis, applied for permission to enter Cuba, and said permission was granted on August 30, 1962.

8. That on August 18, 1962, defendant, Helen Maxine Levi Travis, applied for and was issued a United Mexican States "tourist" permit number 2997335 at the office of Migration, Department of the Interior, Tijuana, B.C., allowing her to enter the Republic of Mexico and remain there for 180 days from date of entry.

9. That on August 31, 1962, United Mexican States tourist permit number 2997335 was cancelled by an official of the Department of Interior, United Mexican States, at Mexico, D.F.

10. That on August 31, 1962, defendant, Helen Maxine Levi Travis, intentionally left and departed from the Central Airport, Mexico, D.F., by boarding

flight number 465 of the Compania Cubana De Aviacion and was a tourist passenger on said flight to Havana, Cuba.

11. At no time pertinent or material herein did defendant, Helen Maxine Levi Travis, bear a valid United States passport specifically endorsed for travel to the Republic of Cuba; she at all times pertinent and material herein knew the provisions of Section 1185(b) of Title 8, United States Code, and Sections 53.2 and 53.3 of Title 22, Code of Federal Regulations.

12. That the defendant, Helen Maxine Levi Travis, on each occasion of her travel to Havana, Cuba, did travel in and about the Republic of Cuba and observe therein the living and working conditions of the people and the effectuation and implementation of various government programs relating to housing, education, agriculture, industrialization and public health. In the course of said travel and observation the said defendant took a number of photographs and those photographs attached hereto (as Exs. 1A to 1M) are representative of those taken by her as aforesaid.

13. That after the return of the defendant, Helen Maxine Levi Travis, from the departures set out in paragraphs 3, 4, 5 and 6 and paragraphs 7, 8, 9 and 10 and to her home in Los Angeles, California, she appeared before various groups and gatherings of her fellow citizens and reported to them her observations and findings during her trips to Cuba as aforesaid, and showed her photographs taken there, including Exs. 1A to 1M. In addition, the said defendant wrote descriptions of her trips and her observations in Cuba which she disseminated by mail to friends and

acquaintances, and the copy of her letter dated February 28, 1962, attached hereto (as Ex. 2) is representative of the information she communicated to them.

Dated: This 2nd day of April, 1964.

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